

Organizations Opposed to H.R. 3313, Federal Jurisdiction Stripping Legislation

July 19, 2004

Dear Member of Congress:

We the undersigned organizations write to urge you to oppose H.R. 3313, the so-called "Marriage Protection Act of 2003." This legislation would grievously undermine the constitutional separation of powers framework. Further, it would set terrible twin precedents: devolving questions of federal law solely to state courts and barring federal citizens from challenging government infringement of fundamental rights in federal court.

H.R. 3313 would eliminate federal court jurisdiction over questions of interpretation of the Defense of Marriage Act (DOMA), eliminating any role for the courts in either enforcement of or challenges to the act. For over 200 years the federal judiciary has been a check on legislative and executive action. By eliminating an entire subject from the courts' jurisdiction, this legislation threatens to upset the delicate balance between the branches of the federal government that has served our nation well. Indeed, passage of this legislation would represent one of the broadest attacks on the separation of powers in American history. While jurisdiction-stripping legislation has been proposed before on varied subjects, previous Congresses have wisely stepped back from the precipice of constitutional conflict that passage of such a bill would entail.

Proponents characterize the legislation as an effort to restrain the power of the federal courts. However, judicial review is not for the benefit of the courts. Its purpose is to give effect to the Constitution's restrictions on the executive and legislative powers. In fact, H.R. 3313 actually restrains plaintiffs who would challenge DOMA in federal courts and at its core is a bar on redress for violations of fundamental rights. While today the question before the House is whether to restrict challenges to DOMA, if Congress by statute can "end run" the Bill of Rights, no rights to liberty, due process, equality under the law, or property guaranteed under the Constitution are safe. Future Congresses could enact restrictions on speech or religious freedoms, infringe on powers reserved to the states, enact uncompensated takings of private property, or restrict voting rights and simply bar federal courts from hearing challenges to such patently unconstitutional acts.

H.R. 3313 expressly sets the precedent for Congress to bar an entire class of U.S. citizens from challenging federal action in federal court. Supporters of the legislation argue that challenges to DOMA could still proceed in state courts, but state courts should not be the sole venues for safeguarding fundamental rights guaranteed under the federal Constitution. H.R. 3313 raises the prospect of the 14th Amendment or the 5th Amendment meaning one thing in Florida, and something else entirely in Alaska, with 48 other interpretations in between. For the first time in U.S. history, the scope of rights embodied in the U.S. Constitution would be defined by state borders.

Finally, allowing state courts the final say on an issue of federal law, in this case the “full faith and credit” provision of DOMA (28 U.S.C. § 1738c), could result in fifty divergent constructions of federal law. Ultimately the precedent of devolving questions of federal law solely to state courts undermines the very purpose of the federal system under our constitution – to provide more consistent, national policies in certain areas. Ironically, while supporters of H.R. 3313 seek to assert greater congressional control over review of the laws it passes, making state courts the primary avenues for challenges to federal actions actually erodes Congress’ control over judicial review. Unlike with the federal judiciary, Congress has no impeachment power over state judges or authority to regulate state courts, and the Senate has no power to advise and consent in their selection.

Jurisdiction-stripping threatens the critical role that the federal courts play in our federal republic in providing legal certainty, checking executive and legislative excess, and protecting individual rights. For all of these reasons, we urge you to vote no on H.R. 3313.

Sincerely,

AFL-CIO

Alliance for Justice

American Civil Liberties Union

Americans for Democratic Action

American Federation of State, County, and Municipal Employees

Americans For Religious Liberty

American Humanist Association

American Immigration Lawyers Association

Americans United For the Separation of Church and State

Central Conference of American Rabbis

DontAmend.com

Human Rights Campaign

Human Rights Watch

Japanese American Citizens League

Leadership Conference on Civil Rights

LLEGÓ

Legal Momentum (the new name of NOW Legal Defense and Education Fund)

MoveOn.org

The Multiracial Activist

National Asian Pacific American Legal Consortium

National Black Justice Coalition

National Council of Jewish Women

National Gay and Lesbian Taskforce

National Fair Housing Alliance

National Women’s Law Center

Parents, Families and Friends of Lesbians and Gays (PFLAG)

People For the American Way

Planned Parenthood Federation of America

The Presbyterian Church (USA), Washington Office
Pride at Work, AFL-CIO
Soulforce
Union for Reform Judaism
United Church of Christ Justice and Witness Ministries
United States Students Association
Unitarian Universalist Association of Congregations
USAction
Women of Reform Judaism